IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5013 of 1989
For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

UDAJI D THAKORE

Appearance:

1. Special Civil Application No. 5013 of 1989

MR KN RAVAL for Petitioner No. 1

MR HARDIK C RAWAL for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik Raval for the petitioner corporation. In this matter, the respondent workman has been served with the notice of rule issued by this court but the respondent workman has not remained present before this court either in person or through any advocate. The matter was, therefore, taken up for hearing in absence of the respondent as it is a matter of the year 1989.

By way of this petition, the petitioner has challenged the award of the labour court, Ahmedabad in Reference (LCA) No. 571 of 1985 dated 28th June, 1988 whereby the labour court has made award of reinstatement in favour of the respondent workman with continuity of service without any back wages for the intervening

period. In this petition, initially, notice was issued on 25th September, 1989 by making it returnable on 11th October, 1989. Thereafter, on 21st December, 1990, rule has been issued and no interim relief has been granted staying operation and execution of the award made by the labour court. In view of that, naturally the award must have been implemented by the labour court.

Learned advocate Mr. Hardik Raval has submitted that there is clear finding recorded by the labour court that the respondent workman has committed misappropriation of Rs.4/- which amount has been considered to be negligible and, therefore, in view of such finding recorded by the labour court, it ought to have imposed some punishment upon the respondent workman while setting aside the order of punishment passed by the petitioner corporation.

I have considered the submissions made by Hardik C. Raval, learned advocate for the petitioner corporation. I have also perused the award made by the labour court. Looking to the findings recorded by the labour court in para 6 of the award, in para 6, the labour court has considered that the respondent workman has committed misappropriation of Rs.4/-. The labour court was of the view that the amount involved in misappropriation was negligible and, therefore, while exercising the powers under section 11A of the Industrial Disputes Act,1947,the labour court has set aside the order of dismissal and granted reinstatement in favour of the workman without any back wages. However, according to my opinion, looking to the gravity of the misconduct committed by the workman as found by the labour court, the labour court ought to have imposed some punishment upon the respondent workman which may have recurring effect. Therefore, according to my opinion, since no stay has been granted by this court while admitting this petition and the award has been implemented by the petitioner corporation in absence of stay, therefore, in such peculiar facts and circumstances of the case, according to my opinion, it would be just and proper if the punishment of stoppage of three annual increments with cumulative effect is imposed upon the respondent workman. The award made by the labour court, to that extent, is required to be modified. Therefore, following order is passed.

Petition is partly allowed. The award made by the labour court Ahmedabad in Reference (LCA) No. 571 of 1985 dated 28th June, 1988 is modified. Petitioner Corporation is directed to stop three annual increments of the

respondent workman with cumulative effect. Rest of the award made by the labour court shall remain in tact. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.16.1.2002. (H.K. Rathod,J.)

Vyas